

HOUSE BILL NO. 1359

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Byron)

A BILL to amend and reenact § 32.1-127.1:03 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2404.1, relating to health care; consent to disclosure of records.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 32.1-127.1:03 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2404.1 as follows:**

**§ 32.1-127.1:03. Health records privacy.**

A. There is hereby recognized an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.

Pursuant to this subsection:

1. Health care entities shall disclose health records to the individual who is the subject of the health record, except as provided in subsections E and F and subsection B of § 8.01-413.

2. Health records shall not be removed from the premises where they are maintained without the approval of the health care entity that maintains such health records, except in accordance with a court order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the regulations relating to change of ownership of health records promulgated by a health regulatory board established in Title 54.1.

3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records of an individual, beyond the purpose for which such disclosure was made, without first obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall not,

27 however, prevent (i) any health care entity that receives health records from another health care entity  
28 from making subsequent disclosures as permitted under this section and the federal Department of Health  
29 and Human Services regulations relating to privacy of the electronic transmission of data and protected  
30 health information promulgated by the United States Department of Health and Human Services as  
31 required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.)  
32 or (ii) any health care entity from furnishing health records and aggregate or other data, from which  
33 individually identifying prescription information has been removed, encoded or encrypted, to qualified  
34 researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors,  
35 for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services  
36 research.

37 4. Health care entities shall, upon the request of the individual who is the subject of the health  
38 record, disclose health records to other health care entities, in any available format of the requester's  
39 choosing, as provided in subsection E.

40 B. As used in this section:

41 "Agent" means a person who has been appointed as an individual's agent under a power of attorney  
42 for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

43 "Certification" means a written representation that is delivered by hand, by first-class mail, by  
44 overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated  
45 confirmation reflecting that all facsimile pages were successfully transmitted.

46 "Guardian" means a court-appointed guardian of the person.

47 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103,  
48 a public or private entity, such as a billing service, repricing company, community health management  
49 information system or community health information system, and "value-added" networks and switches,  
50 that performs either of the following functions: (i) processes or facilitates the processing of health  
51 information received from another entity in a nonstandard format or containing nonstandard data content  
52 into standard data elements or a standard transaction; or (ii) receives a standard transaction from another

53 entity and processes or facilitates the processing of health information into nonstandard format or  
54 nonstandard data content for the receiving entity.

55 "Health care entity" means any health care provider, health plan or health care clearinghouse.

56 "Health care provider" means those entities listed in the definition of "health care provider" in §  
57 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the  
58 purposes of this section. Health care provider shall also include all persons who are licensed, certified,  
59 registered or permitted or who hold a multistate licensure privilege issued by any of the health regulatory  
60 boards within the Department of Health Professions, except persons regulated by the Board of Funeral  
61 Directors and Embalmers or the Board of Veterinary Medicine.

62 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.

63 "Health plan" includes any entity included in such definition as set out in 45 C.F.R. § 160.103.

64 "Health record" means any written, printed or electronically recorded material maintained by a  
65 health care entity in the course of providing health services to an individual concerning the individual and  
66 the services provided. "Health record" also includes the substance of any communication made by an  
67 individual to a health care entity in confidence during or in connection with the provision of health services  
68 or information otherwise acquired by the health care entity about an individual in confidence and in  
69 connection with the provision of health services to the individual.

70 "Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,  
71 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as  
72 payment or reimbursement for any such services.

73 "Individual" means a patient who is receiving or has received health services from a health care  
74 entity.

75 "Individually identifying prescription information" means all prescriptions, drug orders or any  
76 other prescription information that specifically identifies an individual.

77 "Parent" means a biological, adoptive or foster parent.

78 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who  
79 is a mental health professional, documenting or analyzing the contents of conversation during a private

80 counseling session with an individual or a group, joint, or family counseling session that are separated  
81 from the rest of the individual's health record. "Psychotherapy notes" does not include annotations relating  
82 to medication and prescription monitoring, counseling session start and stop times, treatment modalities  
83 and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional  
84 status, treatment plan, or the individual's progress to date.

85 C. The provisions of this section shall not apply to any of the following:

86 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia  
87 Workers' Compensation Act;

88 2. Except where specifically provided herein, the health records of minors;

89 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to §  
90 16.1-248.3; or

91 4. The release of health records to a state correctional facility pursuant to § 53.1-40.10 or a local  
92 or regional correctional facility pursuant to § 53.1-133.03.

93 D. Health care entities may, and, when required by other provisions of state law, shall, disclose  
94 health records:

95 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in  
96 the case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment  
97 of minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment  
98 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an  
99 individual's written authorization, pursuant to the individual's oral authorization for a health care provider  
100 or health plan to discuss the individual's health records with a third party specified by the individual;

101 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant  
102 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a  
103 subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health records  
104 relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in this  
105 subdivision shall be construed to prohibit any staff or employee of a health care entity from providing

106 information about such individual to a law-enforcement officer in connection with such subpoena, search  
107 warrant, or court order;

108 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where  
109 disclosure is reasonably necessary to establish or collect a fee or to defend a health care entity or the health  
110 care entity's employees or staff against any accusation of wrongful conduct; also as required in the course  
111 of an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly  
112 authorized law-enforcement, licensure, accreditation, or professional review entity;

113 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

114 5. In compliance with the provisions of § 8.01-413;

115 6. As required or authorized by law relating to public health activities, health oversight activities,  
116 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,  
117 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,  
118 those contained in §§ 16.1-248.3, 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-  
119 283, 32.1-283.1, 32.1-320, 37.2-710, 37.2-839, 53.1-40.10, 53.1-133.03, 54.1-2400.6, 54.1-2400.7, 54.1-  
120 2400.9, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-  
121 1606;

122 7. Where necessary in connection with the care of the individual;

123 8. In connection with the health care entity's own health care operations or the health care  
124 operations of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of  
125 business in accordance with accepted standards of practice within the health services setting; however, the  
126 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a  
127 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-  
128 3410, 54.1-3411, and 54.1-3412;

129 9. When the individual has waived his right to the privacy of the health records;

130 10. When examination and evaluation of an individual are undertaken pursuant to judicial or  
131 administrative law order, but only to the extent as required by such order;

132           11. To the guardian ad litem and any attorney representing the respondent in the course of a  
133 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 20 (§  
134 64.2-2000 et seq.) of Title 64.2;

135           12. To the guardian ad litem and any attorney appointed by the court to represent an individual  
136 who is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5  
137 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1,  
138 or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title  
139 37.2;

140           13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et  
141 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health authority  
142 or a designee of a community services board or behavioral health authority, or a law-enforcement officer  
143 participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-  
144 169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to any  
145 health care provider evaluating or providing services to the person who is the subject of the proceeding or  
146 monitoring the person's adherence to a treatment plan ordered under those provisions. Health records  
147 disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the  
148 person, or the public from physical injury or to address the health care needs of the person. Information  
149 disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or  
150 retained;

151           14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial  
152 or administrative proceeding, if the court or administrative hearing officer has entered an order granting  
153 the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the  
154 health care entity of such order;

155           15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health  
156 records in accord with § 9.1-156;

157           16. To an agent appointed under an individual's power of attorney or to an agent or decision maker  
158 designated in an individual's advance directive for health care or for decisions on anatomical gifts and

159 organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care  
160 Decisions Act (§ 54.1-2981 et seq.);

161 17. To third-party payors and their agents for purposes of reimbursement;

162 18. As is necessary to support an application for receipt of health care benefits from a governmental  
163 agency or as required by an authorized governmental agency reviewing such application or reviewing  
164 benefits already provided or as necessary to the coordination of prevention and control of disease, injury,  
165 or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

166 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership  
167 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

168 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and  
169 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

170 21. Where necessary in connection with the implementation of a hospital's routine contact process  
171 for organ donation pursuant to subdivision B 4 of § 32.1-127;

172 22. In the case of substance abuse records, when permitted by and in conformity with requirements  
173 of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

174 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate  
175 the adequacy or quality of professional services or the competency and qualifications for professional staff  
176 privileges;

177 24. If the health records are those of a deceased or mentally incapacitated individual to the personal  
178 representative or executor of the deceased individual or the legal guardian or committee of the incompetent  
179 or incapacitated individual or if there is no personal representative, executor, legal guardian or committee  
180 appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter,  
181 either parent, an adult brother or sister, or any other relative of the deceased individual in order of blood  
182 relationship;

183 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote  
184 identification of all potential organ, eye, and tissue donors in conformance with the requirements of  
185 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's

186 designated organ procurement organization certified by the United States Health Care Financing  
187 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association  
188 of America or the American Association of Tissue Banks;

189 26. To the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title  
190 2.2;

191 27. To an entity participating in the activities of a local health partnership authority established  
192 pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4, pursuant to subdivision 1;

193 28. To law-enforcement officials by each licensed emergency medical services agency, (i) when  
194 the individual is the victim of a crime or (ii) when the individual has been arrested and has received  
195 emergency medical services or has refused emergency medical services and the health records consist of  
196 the prehospital patient care report required by § 32.1-116.1;

197 29. To law-enforcement officials, in response to their request, for the purpose of identifying or  
198 locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and  
199 Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following  
200 information may be disclosed: (i) name and address of the person, (ii) date and place of birth of the person,  
201 (iii) social security number of the person, (iv) blood type of the person, (v) date and time of treatment  
202 received by the person, (vi) date and time of death of the person, where applicable, (vii) description of  
203 distinguishing physical characteristics of the person, and (viii) type of injury sustained by the person;

204 30. To law-enforcement officials regarding the death of an individual for the purpose of alerting  
205 law enforcement of the death if the health care entity has a suspicion that such death may have resulted  
206 from criminal conduct;

207 31. To law-enforcement officials if the health care entity believes in good faith that the information  
208 disclosed constitutes evidence of a crime that occurred on its premises;

209 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a  
210 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article  
211 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

212 33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed  
213 emergency medical services agency when the records consist of the prehospital patient care report required  
214 by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing duties or  
215 tasks that are within the scope of his employment;

216 34. To notify a family member or personal representative of an individual who is the subject of a  
217 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8 (§ 37.2-  
218 800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement with the  
219 individual's health care, which may include the individual's location and general condition, when the  
220 individual has the capacity to make health care decisions and (i) the individual has agreed to the  
221 notification, (ii) the individual has been provided an opportunity to object to the notification and does not  
222 express an objection, or (iii) the health care provider can, on the basis of his professional judgment,  
223 reasonably infer from the circumstances that the individual does not object to the notification. If the  
224 opportunity to agree or object to the notification cannot practicably be provided because of the individual's  
225 incapacity or an emergency circumstance, the health care provider may notify a family member or personal  
226 representative of the individual of information that is directly relevant to such person's involvement with  
227 the individual's health care, which may include the individual's location and general condition if the health  
228 care provider, in the exercise of his professional judgment, determines that the notification is in the best  
229 interests of the individual. Such notification shall not be made if the provider has actual knowledge the  
230 family member or personal representative is currently prohibited by court order from contacting the  
231 individual;

232 35. To a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a  
233 public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher  
234 education; and

235 36. To a regional emergency medical services council pursuant to § 32.1-116.1, for purposes  
236 limited to monitoring and improving the quality of emergency medical services pursuant to § 32.1-111.3.

237 Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an  
238 individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by

239 the health care entity is (i) for its own training programs in which students, trainees, or practitioners in  
240 mental health are being taught under supervision to practice or to improve their skills in group, joint,  
241 family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of  
242 wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to  
243 take precautions to protect third parties from violent behavior or other serious harm; (iv) required in the  
244 course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly  
245 authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise  
246 required by law.

247 E. Health care records required to be disclosed pursuant to this section shall be made available  
248 electronically only to the extent and in the manner authorized by the federal Health Information  
249 Technology for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the  
250 Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing  
251 regulations. Notwithstanding any other provision to the contrary, a health care entity shall not be required  
252 to provide records in an electronic format requested if (i) the electronic format is not reasonably available  
253 without additional cost to the health care entity, (ii) the records would be subject to modification in the  
254 format requested, or (iii) the health care entity determines that the integrity of the records could be  
255 compromised in the electronic format requested. Requests for copies of or electronic access to health  
256 records shall (a) be in writing, dated and signed by the requester; (b) identify the nature of the information  
257 requested; and (c) include evidence of the authority of the requester to receive such copies or access such  
258 records, and identification of the person to whom the information is to be disclosed; and (d) specify  
259 whether the requester would like the records in electronic format, if available, or in paper format. The  
260 health care entity shall accept a photocopy, facsimile, or other copy of the original signed by the requester  
261 as if it were an original. Within 30 days of receipt of a request for copies of or electronic access to health  
262 records, the health care entity shall do one of the following: (1) furnish such copies of or allow electronic  
263 access to the requested health records to any requester authorized to receive them in electronic format if  
264 so requested; (2) inform the requester if the information does not exist or cannot be found; (3) if the health  
265 care entity does not maintain a record of the information, so inform the requester and provide the name

266 and address, if known, of the health care entity who maintains the record; or (4) deny the request (A) under  
267 subsection F, (B) on the grounds that the requester has not established his authority to receive such health  
268 records or proof of his identity, or (C) as otherwise provided by law. Procedures set forth in this section  
269 shall apply only to requests for health records not specifically governed by other provisions of state law.

270 F. Except as provided in subsection B of § 8.01-413, copies of or electronic access to an  
271 individual's health records shall not be furnished to such individual or anyone authorized to act on the  
272 individual's behalf when the individual's treating physician, clinical psychologist, or clinical social worker  
273 has made a part of the individual's record a written statement that, in the exercise of his professional  
274 judgment, the furnishing to or review by the individual of such health records would be reasonably likely  
275 to endanger the life or physical safety of the individual or another person, or that such health record makes  
276 reference to a person other than a health care provider and the access requested would be reasonably likely  
277 to cause substantial harm to such referenced person. If any health care entity denies a request for copies  
278 of or electronic access to health records based on such statement, the health care entity shall inform the  
279 individual of the individual's right to designate, in writing, at his own expense, another reviewing  
280 physician, clinical psychologist, or clinical social worker whose licensure, training and experience relative  
281 to the individual's condition are at least equivalent to that of the physician, clinical psychologist, or clinical  
282 social worker upon whose opinion the denial is based. The designated reviewing physician, clinical  
283 psychologist, or clinical social worker shall make a judgment as to whether to make the health record  
284 available to the individual.

285 The health care entity denying the request shall also inform the individual of the individual's right  
286 to request in writing that such health care entity designate, at its own expense, a physician, clinical  
287 psychologist, or clinical social worker, whose licensure, training, and experience relative to the  
288 individual's condition are at least equivalent to that of the physician, clinical psychologist, or clinical social  
289 worker upon whose professional judgment the denial is based and who did not participate in the original  
290 decision to deny the health records, who shall make a judgment as to whether to make the health record  
291 available to the individual. The health care entity shall comply with the judgment of the reviewing  
292 physician, clinical psychologist, or clinical social worker. The health care entity shall permit copying and

293 examination of the health record by such other physician, clinical psychologist, or clinical social worker  
294 designated by either the individual at his own expense or by the health care entity at its expense.

295 Any health record copied for review by any such designated physician, clinical psychologist, or  
296 clinical social worker shall be accompanied by a statement from the custodian of the health record that  
297 the individual's treating physician, clinical psychologist, or clinical social worker determined that the  
298 individual's review of his health record would be reasonably likely to endanger the life or physical safety  
299 of the individual or would be reasonably likely to cause substantial harm to a person referenced in the  
300 health record who is not a health care provider.

301 Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive  
302 copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized  
303 to act on his behalf.

304 G. A written authorization to allow release of an individual's health records shall substantially  
305 include the following information:

306 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

307 Individual's Name \_\_\_\_\_

308 Health Care Entity's Name \_\_\_\_\_

309 Person, Agency, or Health Care Entity to whom disclosure is to be made

310 \_\_\_\_\_

311 Information or Health Records to be disclosed

312 \_\_\_\_\_

313 Purpose of Disclosure or at the Request of the Individual

314 \_\_\_\_\_

315 As the person signing this authorization, I understand that I am giving my permission to the above-  
316 named health care entity for disclosure of confidential health records. I understand that the health care  
317 entity may not condition treatment or payment on my willingness to sign this authorization unless the  
318 specific circumstances under which such conditioning is permitted by law are applicable and are set forth  
319 in this authorization. I also understand that I have the right to revoke this authorization at any time, but

320 that my revocation is not effective until delivered in writing to the person who is in possession of my  
 321 health records and is not effective as to health records already disclosed under this authorization. A copy  
 322 of this authorization and a notation concerning the persons or agencies to whom disclosure was made shall  
 323 be included with my original health records. I understand that health information disclosed under this  
 324 authorization might be redisclosed by a recipient and may, as a result of such disclosure, no longer be  
 325 protected to the same extent as such health information was protected by law while solely in the possession  
 326 of the health care entity.

327 This authorization expires on (date) or (event) \_\_\_\_\_

328 Signature of Individual or Individual's Legal Representative if Individual is Unable to Sign

329 \_\_\_\_\_

330 Relationship or Authority of Legal Representative

331 \_\_\_\_\_

332 Date of Signature \_\_\_\_\_

333 H. Pursuant to this subsection:

334 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or  
 335 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another  
 336 party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the  
 337 request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's counsel  
 338 or to the other party if pro se, simultaneously with filing the request or issuance of the subpoena. No party  
 339 to an action or proceeding shall request or cause the issuance of a subpoena duces tecum for the health  
 340 records of a nonparty witness unless a copy of the request for the subpoena or a copy of the attorney-  
 341 issued subpoena is provided to the nonparty witness simultaneously with filing the request or issuance of  
 342 the attorney-issued subpoena.

343 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the  
 344 date of the subpoena except by order of a court or administrative agency for good cause shown. When a  
 345 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces tecum  
 346 earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

347 Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena  
348 duces tecum is being issued shall have the duty to determine whether the individual whose health records  
349 are being sought is pro se or a nonparty.

350 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,  
351 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness together  
352 with the copy of the request for subpoena, or a copy of the subpoena in the case of an attorney-issued  
353 subpoena, a statement informing them of their rights and remedies. The statement shall include the  
354 following language and the heading shall be in boldface capital letters:

355 NOTICE TO INDIVIDUAL

356 The attached document means that (insert name of party requesting or causing issuance of the  
357 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has been  
358 issued by the other party's attorney to your doctor, other health care providers (names of health care  
359 providers inserted here) or other health care entity (name of health care entity to be inserted here) requiring  
360 them to produce your health records. Your doctor, other health care provider or other health care entity is  
361 required to respond by providing a copy of your health records. If you believe your health records should  
362 not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the  
363 court or the administrative agency to quash the subpoena. If you elect to file a motion to quash, such  
364 motion must be filed within 15 days of the date of the request or of the attorney-issued subpoena. You  
365 may contact the clerk's office or the administrative agency to determine the requirements that must be  
366 satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest.  
367 If you elect to file a motion to quash, you must notify your doctor, other health care provider(s), or other  
368 health care entity, that you are filing the motion so that the health care provider or health care entity knows  
369 to send the health records to the clerk of court or administrative agency in a sealed envelope or package  
370 for safekeeping while your motion is decided.

371 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued  
372 for an individual's health records shall include a Notice in the same part of the request in which the

373 recipient of the subpoena duces tecum is directed where and when to return the health records. Such notice  
374 shall be in boldface capital letters and shall include the following language:

375 NOTICE TO HEALTH CARE ENTITIES

376 A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE  
377 INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU  
378 OR THAT INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE  
379 ATTACHED SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE  
380 THE MOTION WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

381 YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED  
382 WRITTEN CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS  
383 ISSUED THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

384 NO MOTION TO QUASH WAS FILED; OR

385 ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE  
386 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH  
387 SUCH RESOLUTION.

388 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE  
389 BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A  
390 MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO  
391 THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA  
392 OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE  
393 FOLLOWING PROCEDURE:

394 PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE  
395 SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE  
396 AGENCY WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND  
397 ARE TO BE HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE  
398 SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN

399 OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR  
400 ADMINISTRATIVE AGENCY.

401 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have  
402 the duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

403 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in  
404 a sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such  
405 health records until they have received a certification as set forth in subdivision 5 or 8 from the party on  
406 whose behalf the subpoena duces tecum was issued.

407 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been  
408 filed or if the health care entity files a motion to quash the subpoena for health records, then the health  
409 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or  
410 administrative agency issuing the subpoena or in whose court or administrative agency the action is  
411 pending. The court or administrative agency shall place the health records under seal until a determination  
412 is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the  
413 judge or administrative agency. In the event the court or administrative agency grants the motion to quash,  
414 the health records shall be returned to the health care entity in the same sealed envelope in which they  
415 were delivered to the court or administrative agency. In the event that a judge or administrative agency  
416 orders the sealed envelope to be opened to review the health records in camera, a copy of the order shall  
417 accompany any health records returned to the health care entity. The health records returned to the health  
418 care entity shall be in a securely sealed envelope.

419 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued  
420 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the  
421 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion to  
422 quash was filed. Any health care entity receiving such certification shall have the duty to comply with the  
423 subpoena duces tecum by returning the specified health records by either the return date on the subpoena  
424 or five days after receipt of the certification, whichever is later.

425           6. In the event that the individual whose health records are being sought files a motion to quash  
426 the subpoena, the court or administrative agency shall decide whether good cause has been shown by the  
427 discovering party to compel disclosure of the individual's health records over the individual's objections.  
428 In determining whether good cause has been shown, the court or administrative agency shall consider (i)  
429 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of  
430 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure  
431 on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding;  
432 and (v) any other relevant factor.

433           7. Concurrent with the court or administrative agency's resolution of a motion to quash, if  
434 subpoenaed health records have been submitted by a health care entity to the court or administrative  
435 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no  
436 submitted health records should be disclosed, return all submitted health records to the health care entity  
437 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide  
438 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon  
439 determining that only a portion of the submitted health records should be disclosed, provide such portion  
440 to the party on whose behalf the subpoena was issued and return the remaining health records to the health  
441 care entity in a sealed envelope.

442           8. Following the court or administrative agency's resolution of a motion to quash, the party on  
443 whose behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the  
444 subpoenaed health care entity a statement of one of the following:

445           a. All filed motions to quash have been resolved by the court or administrative agency and the  
446 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the  
447 health records previously delivered in a sealed envelope to the clerk of the court or administrative agency  
448 will not be returned to the health care entity;

449           b. All filed motions to quash have been resolved by the court or administrative agency and the  
450 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no  
451 health records have previously been delivered to the court or administrative agency by the health care

452 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records  
453 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,  
454 whichever is later;

455 c. All filed motions to quash have been resolved by the court or administrative agency and the  
456 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no  
457 health records shall be disclosed and all health records previously delivered in a sealed envelope to the  
458 clerk of the court or administrative agency will be returned to the health care entity;

459 d. All filed motions to quash have been resolved by the court or administrative agency and the  
460 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only  
461 limited disclosure has been authorized. The certification shall state that only the portion of the health  
462 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall be  
463 disclosed. The certification shall also state that health records that were previously delivered to the court  
464 or administrative agency for which disclosure has been authorized will not be returned to the health care  
465 entity; however, all health records for which disclosure has not been authorized will be returned to the  
466 health care entity; or

467 e. All filed motions to quash have been resolved by the court or administrative agency and the  
468 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no health  
469 records have previously been delivered to the court or administrative agency by the health care entity, the  
470 health care entity shall return only those health records specified in the certification, consistent with the  
471 court or administrative agency's ruling, by the return date on the subpoena or five days after receipt of the  
472 certification, whichever is later.

473 A copy of the court or administrative agency's ruling shall accompany any certification made  
474 pursuant to this subdivision.

475 9. The provisions of this subsection have no application to subpoenas for health records requested  
476 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit,  
477 review or proceedings regarding a health care entity's conduct.

478 The provisions of this subsection shall apply to subpoenas for the health records of both minors  
479 and adults.

480 Nothing in this subsection shall have any effect on the existing authority of a court or  
481 administrative agency to issue a protective order regarding health records, including, but not limited to,  
482 ordering the return of health records to a health care entity, after the period for filing a motion to quash  
483 has passed.

484 A subpoena for substance abuse records must conform to the requirements of federal law found in  
485 42 C.F.R. Part 2, Subpart E.

486 I. Health care entities may testify about the health records of an individual in compliance with §§  
487 8.01-399 and 8.01-400.2.

488 J. If an individual requests a copy of his health record from a health care entity, the health care  
489 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and labor  
490 of copying the requested information, postage when the individual requests that such information be  
491 mailed, and preparation of an explanation or summary of such information as agreed to by the individual.  
492 For the purposes of this section, "individual" shall subsume a person with authority to act on behalf of the  
493 individual who is the subject of the health record in making decisions related to his health care.

494 K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a  
495 controlled substance required to be reported to the Prescription Monitoring Program established pursuant  
496 to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained from  
497 the Prescription Monitoring Program and contained in a patient's health care record to another health care  
498 provider when such disclosure is related to the care or treatment of the patient who is the subject of the  
499 record.

500 L. An authorization for the release of health records executed pursuant to this section shall remain  
501 in effect until (i) the authorization is revoked in writing and delivered to the health care entity maintaining  
502 the record that is subject to the authorization by the person who executed the authorization, (ii) any  
503 expiration date set forth in the authorization, or (iii) the health care entity maintaining the record becomes  
504 aware of any expiration event described in the authorization, whichever occurs first. However, any

505 revocation of an authorization for the release of health records executed pursuant to this section shall not  
506 be effective to the extent that the health care entity maintaining the record has released health records prior  
507 to delivery of such revocation in reliance upon the authorization or as otherwise provided pursuant to 45  
508 C.F.R. § 164.508. Except as expressly limited in an authorization for the release of health records pursuant  
509 to this section, such authorization shall be deemed to include authorization for the release of all health  
510 records of the person maintained by the health care provider to whom the authorization was granted. If a  
511 health care provider receives a written revocation of an authorization for the release of health records in  
512 accordance with this subsection, a copy of such written revocation shall be included in the person's original  
513 health record maintained by the health care provider.

514 An authorization for the release of health records executed pursuant to this section shall, unless  
515 otherwise expressly limited in the authorization, be deemed to include authorization for the person named  
516 in the authorization to assist the person who is the subject of the health record in accessing health care  
517 services, including scheduling appointments for the person who is the subject of the health record and  
518 attending appointments together with the person who is the subject of the health record.

519 **§ 54.1-2404.1. Health care providers; release of records; actions for which an authorization**  
520 **is not required.**

521 A. Subject to any limitations set forth in an authorization for the release of health records executed  
522 pursuant to § 32.1-127.1:03 and the provisions of subsection F of § 32.1-127.1:03, every health care  
523 provider shall make health records, as defined in § 32.1-127.1:03, of a patient available to any person  
524 designated by a patient in an authorization to release health records pursuant to § 32.1-127.1:03 to the  
525 same extent that such health records are required to be made available to the patient had the patient  
526 requested such health records.

527 B. Every health care provider shall allow a spouse, parent, adult child, adult sibling, or other person  
528 identified by a patient to make an appointment for medical services on behalf of such patient, regardless  
529 of whether such patient has executed an authorization to release health records to such person pursuant to  
530 § 32.1-127.1:03; however, such health care provider shall not release protected health information to the  
531 person making the appointment for medical services on behalf of the patient unless the patient has

532 executed an authorization to release health records pursuant to § 32.1-127.1:03 and unless otherwise  
533 permitted or required to do so by federal or state law or regulations. Nothing in this subsection shall  
534 prevent a health care provider from sharing relevant protected health information related to the patient's  
535 health care or payment with a spouse, parent, adult child, adult sibling, or other person involved in the  
536 patient's health care or payment when the health care provider can reasonably infer, based on his  
537 professional judgment, that the patient who is the subject of such information does not object or where it  
538 is in the best interest of a patient who is incapacitated or from whom it is impracticable to obtain consent.

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